

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

MFA.No. 935 of 2001

OPMV.2031/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

APPELLANT/3RD RESPONDENT:

**NATIONAL INSURANCE CO. LTD., REP. BY
ITS MANAGER, KOCHI REGIONAL OFFICE,
T.P.CELL, M.G.ROAD, ERNAKULAM.**

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 6:

- 1. M.P.JOHN, S/O PAILY, AGED ABOUT 46,
MUDAPPLANGHAL HOUSE, MEKKADAMPU P.O.,
MUVATTUPUZHA.**
- 2. M.S.PEETHAMBARAN, S/O SANKU, MANALIL
HOUSE, ENATHI P.O., VAIKOM.**
- 3. V.VMADHAVAN, S/O V.S.VELAYUDHAN,
VELANPARAMBIL, THOTTAKUR, KOTTAYAM.**
- 4. DR.GEORGE THOMAS, S/O VARKEY, KOITHARA
NORTH HOUSE, KADAVANTHRA.**
- 5. BOSE M.THOMAS, S/O THOMAS, MURITHOTTATHIL
HOUSE, MUVATTUPUZHA.**
- 6. THE ORIENTAL INSURANCE CO. LTD., KOCHI - 35.**

R6 BY ADV. SRI.M.JACOB MURICKAN

**THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION
ON 31/05/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

J.B.Koshy & K.P.Balachandran, JJ.

C.M.P.No.7171 of 2001 &

M.F.A.No. 935 of 2001

JUDGMENT

Koshy, J.

C.M.P.No.7171/01 is filed to condone the delay of 329 days in filing the appeal. The appeal is filed by the Insurance Company. The reason stated for condoning the delay is that on verification it was found that some fault was committed by the officers of the Insurance Company in not properly defending the case. We are of the opinion that this is not a satisfactory ground to condone the long delay. The contention of the claimant is that he got serious injuries in the accident occurred due to the negligence of the driver of the bus, insured by the appellant Insurance Company. He was a pillion rider. Occurrence of accident and injury are not disputed. It is the contention of the appellant that in Exhibit A3 final report, it is

stated that it was pure accident and the driver of the motor cycle as well as the driver of the bus are not negligent. This was not brought to the notice of the Tribunal. It is further contended that there is no evidence to show that the driver of the bus was negligent. The Tribunal considered this aspect as follows:

"The petitioner is examined as PW1. He stated in the chief examination that the motor cycle was moving from west to east and from the opposite direction the bus was moving through the wrong side and that due to the negligence on the part of the second respondent the bus hit the motor cycle. There is no contra evidence. From the evidence of the petitioner as PW1, I am satisfied that the bus was not parked one and was moving from east to west. Failure on the part of the second respondent to file written statement denying the allegation against him regarding negligence is an indication to show that the accident took place due to

the negligence on his part. Admittedly, with respect to the accident Kochi City Traffic Police registered a case as Crime No.937/92. But, on investigation, the police filed report to refer the case as 'Accidental one'. But, for that sole reason it cannot be said that the accident took place not due to the negligence on the part of the second respondent driver of the bus. Exhibit A2 is the copy of the scene mahazar prepared by the police in connection with the crime registered. It is proved by Exhibit A2 that at the place of accident road is lying straight, that the total width of the tarred portion of the road is 6.08 metres and that the spot of accident is 40 cms towards north from the northern tar end. The sport of accident is the extreme wrong side of the bus which was moving from east to west. From the available materials, I am satisfied that the accident took place solely due to the negligence on the part of the second respondent in driving the bus."

The above shows that Exhibit A3 final report was also considered by the Tribunal. Exhibit A2 scene mahazar and Exhibit A3 final report would show that the bus was on the wrong side and there was unchallenged evidence of PW1. So, from the available evidence the Tribunal held that the accident occurred due to the negligence of the driver of the bus. The fact of accident is also not disputed. Therefore, it cannot be stated that the Tribunal went wrong in awarding the compensation. Quantum of compensation is not disputed. In any event, if the officers are responsible, the Insurance Company is free to take action against them. But, in this case no material was produced before the court to substantiate the allegations made against the officers. We also note that so far notice to respondents 3 and 5 are not served. In view of the above, we are not satisfied that the long delay is satisfactorily explained. Therefore, we dismiss the delay

condonation application. Consequently, the appeal is also dismissed.

(J.B.Koshy, Judge)

31st May, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.935 of 2001

JUDGMENT

31st May, 2007